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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA

3:16-CR-00051-BR-16

v.

KENNETH MEDENBACH,
Defendant.

**GOVERNMENT'S RESPONSE TO
DEFENDANT MEDENBACH'S
AMENDED MOTION TO
RECONSIDER ORAL MOTION
TO DISMISS**

The United States of America, by Billy J. Williams, United States Attorney for the District of Oregon, and through Ethan D. Knight, Geoffrey A. Barrow, and Craig J. Gabriel, Assistant United States Attorneys, hereby responds to defendant Medenbach's Amended Motion to Reconsider Oral Motion to Dismiss (ECF No. 384). For the reasons set forth below, defendant's Motion should be denied.

I. Legal Argument

Defendant asks this Court to overrule *Marbury v. Madison*, 5.U.S. 137 (1803).

Defendant has raised nearly identical claims before other federal courts. All of those courts have rejected defendant's arguments as frivolous. *See, e.g., United States v. Medenbach*, No. 96-30168, 1997 WL 306437, at *3 (9th Cir. 1997) (unpublished) ("We conclude that [Medenbach's] argument against the constitutionality of judicial review is meritless.").

Defendant also raises a claim that this Court's oath of office is "inconsistent with the Constitution." Again, defendant's claim is without merit. *See Medenbach*, 1997 WL 306437, at *3 ("[W] reject Medenbach's claim that the district court judge's oath of office was deficient.").

More recently, The Honorable Owen M. Panner rejected similar arguments by the defendant here in the District of Oregon, in *Medenbach v. United States*, Case No. 1:14-CV-641-PA, which is attached as Exhibit 1. As Judge Panner stated: "[Medenbach's] claim is wholly insubstantial because the slight difference in wording between the Constitution and the statute providing the oath of office has no legal significance." Exhibit 1, at 4. In his present Motion, defendant is now simply advancing the same arguments about a "slight difference in wording" that were previously rejected by the Ninth Circuit and Judge Panner.

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II. Conclusion

This Court is bound by the two seminal holdings of *Marbury v. Madison* and *United States v. Medenbach*. Defendant has preserved this issue for appeal, but his Motion should be denied.

Dated this 13th day of April 2016.

Respectfully submitted,

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s/ Craig J. Gabriel

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